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VICKI COCCHIARELLA  
MACK COLE  
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KIM GILLAN - VICE  
CHAIRMAN  
GEORGE GOLIE  
DANIEL MCGEE  
DOUG MOOD  
BRAD NEWMAN  
MARK NOENNIG

## Montana Legislative Council

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November 19, 2002

### MINUTES

Room 172, State Capitol  
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.  
**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

#### COMMITTEE MEMBERS PRESENT

Rep. Kim Gillan, Vice Chair  
Sen. B.F. "Chris" Christiaens  
Sen. Vicki Cocchiarella  
Sen. Mack Cole  
Sen. Steve Doherty  
Sen. Duane Grimes  
Sen. Fred Thomas  
Rep. George Golie  
Rep. Dan McGee  
Rep. Doug Mood  
Rep. Brad Newman  
Rep. Mark Noennig

#### STAFF PRESENT

Lois Menzies, Executive Director, Legislative Services Division (LSD)  
Greg Petesch, Director, Legal Services, LSD  
Todd Everts, Legislative Environmental Analyst, Legislative Environmental Policy Office, LSD  
Dave Bohyer, Director, Office of Research and Policy Analysis, LSD  
Karen Berger, Financial Services Manager, LSD  
Susan Fox, Legislative Research Analyst, Office of Research and Policy Analysis, LSD  
Stephen Maly, Legislative Research Analyst, Office of Research and Policy Analysis, LSD

## **COMMITTEE ACTION**

The Legislative Council agreed to introduce the following legislation for consideration by the 2003 Legislature:

- ! revising the Legislative Council's appointment authority regarding interstate, international, and intergovernmental entities;
- ! requiring the Legislative Council to review draft legislation proposed by an agency or other entity not statutorily attached to an interim committee or the Environmental Quality Council;
- ! providing for an immediate effective date for all legislation enacted during a special session unless a different time is prescribed in the enacting legislation;
- ! clarifying that a standing committee may not meet during the interim between regular legislative sessions, except in conjunction with committee meetings held in preparation for a special session;
- ! the Code Commissioner bill;
- ! modifying the districts from which members of the Districting and Apportionment Commission are selected; and
- ! providing for the redistricting of district courts while retaining the same number of judges.

## **CALL TO ORDER, ROLL CALL, AND APPROVAL OF MINUTES**

Rep. Gillan called the meeting to order at 1 p.m. All members were present. The Council approved the minutes from the September 12, 2002, meeting without revision.

## **INTRODUCTION OF NEW LEGISLATIVE SERVICES DIVISION STAFF**

**Lois Menzies, Executive Director, LSD** introduced Dawn Field, Legislative Secretary and Pat Murdo, Legislative Research Analyst who have recently joined the LSD staff. The Council welcomed Ms. Field and Ms. Murdo to the Legislative Branch and wished them well in their new jobs.

## **REPORT FROM SUBCOMMITTEE ON INTERSTATE AND INTERNATIONAL COMMITTEES**

Sen. Thomas, Chair, Subcommittee on Interstate and International Committees reported that the Subcommittee met this morning and adopted a recommendation in the form of draft legislation for the Council's consideration. (EXHIBIT #1) Sen. Thomas said that the bill addresses appointments to interstate, intergovernmental, and international entities, not appointments to standing or interim committees. In particular, the bill defines how appointments to organizations such as the Council of State Governments (CSG) and the National Conference of State Legislatures (NCSL) are to be made. The current statute, section 5-11-301, MCA, is confusing and is repealed in the bill. New language in the bill clarifies that the Legislative Council has the authority to appoint voting members to these organizations. This bill does not affect the selection by leadership of members to attend educational seminars or participate in good will tours, which are not voting positions. He noted that the bill was unanimously endorsed by the subcommittee. Sen. Thomas moved that the bill be approved.

Rep. McGee asked what problem was being fixed by this bill. Sen. Thomas responded that the current statutory provisions are unclear and that this bill would clarify the Legislative Council's role in appointments to interstate, intergovernmental, and international entities. Rep. McGee said that he opposes the changes because they are too broad. Sen. Thomas noted that the definition of "member" in the bill, which means the authority to represent the Legislature for voting purposes, significantly narrows the scope of the appointment authority.

Rep. Noennig reiterated that the current law makes little sense. He also stated that the proposed bill provides that if an appointment procedure is currently defined in statute, the Legislative Council cannot make an appointment. Sen. Cocchiarella said that this bill is an "incredible move forward." Because legislative leadership serves on the Council, they will be kept in the loop. Sen. Doherty said that selection of members to attend educational seminars or participate in good will tours would rest with leadership, not the Legislative Council, under this bill.

The motion to approve the proposed bill passed 11 - 1 with Rep. McGee voting no. Rep. Noennig agreed to sponsor the bill.

### **OTHER PROPOSED LEGISLATION**

Ms. Menzies provided a handout describing three other bills for possible Legislative Council sponsorship. (EXHIBIT #2)

#### ***Legislative Council review of proposed legislation for certain agencies***

The first bill would require the Legislative Council to review draft legislation proposed by any agency not statutorily assigned to an interim committee or the Environmental Quality Council (EQC). These unassigned agencies include the Governor's office and the agencies attached to the Governor's office. Sen. Cole moved that the proposed bill draft be approved.

Sen. Doherty said that the Legislative Council must impress upon interim committees that their role in reviewing agency legislation is to authorize the bills to be drafted, not to endorse or disapprove the legislation. In response to a question from Sen. Thomas, Ms. Menzies said that the review process worked well this interim. Rep. Mood said that he went through the process as an EQC member and found it beneficial for both the EQC and the executive branch agencies.

Rep. McGee said that the bill does not allow the Legislative Council to refer agency bill drafts to another committee. He suggested that the Council have an opportunity to refer because the Council is a general, not a specialized, committee. People who serve on the Council do not necessarily have subject matter expertise relative to the bills under review. Sen. Grimes and Sen. Thomas agreed that being able to refer an agency bill to another interim committee for review had merit. Sen. Cocchiarella expressed concern that if one committee could refer agency legislation to another, agencies may get to go wherever they want for review of their legislation.

The motion passed unanimously to approve the bill as presented. Sen. Cocchiarella agreed to sponsor the bill.

### ***Immediate effective date for special session legislation***

Ms. Menzies reported that the second bill provides for an immediate effective date for all legislation enacted during a special session unless a different time is prescribed in the enacting legislation. Sen. Christiaens moved adoption of the bill draft. The motion passed unanimously. Rep. McGee agreed to sponsor the bill.

### ***Clarification of role of standing committees during interim***

According to Ms. Menzies, the third bill would clarify that a standing committee may not meet and conduct business during an interim unless activated in conjunction with a special session. She said that to allow standing committees to meet may undermine the purpose of interim committees. In addition, no money is appropriated to pay standing committee members' salary and expenses during an interim meeting. Sen. Thomas moved to approve the proposed bill.

In response to a question, **Greg Petesch, Director, Legal Services, LSD** said that he had recommended this legislation because it is an unnecessary expense for standing committees to convene to address certain issues when the interim committees have been statutorily assigned oversight of these same issues. He added that the current situation is confusing because there is no statutory guidance on whether a standing committee can or cannot meet during an interim.

Sen. Grimes asked whether there are any reasons why a standing committee should meet during the interim. Mr. Petesch replied that he did not believe that there were any reasons since the interim committees now provide a forum for discussion of public policy issues. Sen. Thomas suggested that the proposed bill clarify that it is permissible for a standing committee to meet during a special session. Sen. Grimes questioned the criticality of this legislation and wondered what kind of debate it would generate during the session.

In response to Sen. Thomas's suggestion, Rep. Noennig made a substitute motion to approve the proposed bill with language added to clarify that a standing committee may meet during a special session. The motion passed 11 - 1 with Sen. Grimes voting no. Sen. Thomas agreed to carry the bill.

### ***Code Commissioner bill***

Mr. Petesch presented the Code Commissioner bill to members. (EXHIBIT #3) He noted that this was the largest Code Commissioner bill that he has prepared to date. He outlined the procedure used by the LSD in preparing the bill and discussed the types and number of provisions contained in the bill. Mr. Petesch noted that the first section specifies the correct citation form for references to the Montana Code Annotated. The last section authorizes the Code Commissioner to correct certain erroneous references in the code without the necessity of legislative action.

Rep. McGee moved that the Code Commissioner bill be approved. The motion passed unanimously. Sen. Grimes agreed to sponsor the bill.

### ***Modification of districts used for appointment of members to the Districting and Apportionment Commission***

**Susan Fox, Legislative Research Analyst, LSD** said that the Council may want to consider introducing legislation to modify the districts used for selection of members to the Districting and Apportionment Commission. (EXHIBIT #4) The current four districts are malapportioned because of population shifts in the state. She noted that an equal population standard could be applied to the four districts to redistrict them. The new districts would not come into play until 2009.

Sen. Doherty asked if there was a requirement for the Districting and Apportionment Commission districts to have equal representation. Ms. Fox said that she knew of no requirement; she noted that Commission members are appointed, not elected. Sen. Thomas moved that a bill be drafted to adjust the districts from which members of the Districting and Apportionment Commission are selected and to provide that the districts be adjusted every 10 years.

Sen. Doherty said that the current districts force representation from different parts of the state; however, they also limit the ability of leadership to select the individuals who they really want to serve on the Commission. For instance, if two appointing authorities want to select someone from the same area, only one is able to do so; the other must select an individual from a different district. Rep. Noennig suggested that information other than census data could be used to form the districts; he said that more updated information may be available.

Rep. Newman asked Ms. Fox which options she would employ in reshaping the Commission districts. Ms. Fox said that she would ask the Legislative Council to appoint a sponsor or a subcommittee to make those policy decisions. Sen. Thomas said that he thought it was important that this issue was brought before the Council now because eight years from now no one may think about the need to adjust the districts. He also said that Sen. Doherty raised some interesting points. Sen. Thomas suggested that maybe the state needs to return to two districts, east and west, which would give appointing authorities more flexibility in their selections.

Rep. Gillan expressed concern on whether enough direction has been provided to staff to draft the bill. Sen. Doherty said it would be useful for a subcommittee to work on the bill and then report to the new Legislative Council some time during the first part of the session. Mr. Petesch noted that if this bill draft is to be at the request of the Legislative Council, it must be preintroduced no later than 5 p.m. on December 27, 2002. Ms. Menzies asked whether the redistricting issue was so time sensitive that it needed to be addressed during this session. If not, the Legislative Council could address this issue during the interim and propose legislation in 2005. Ms. Fox said that it did not need to be addressed this session.

Sen. Thomas moved to amend his motion to direct staff to draft a bill providing an east-west division for the districts by population instead of having four districts.

Rep. Mood said that the Council needs to give direction to Ms. Fox on the necessary changes to the current districts. Rep. Noennig agreed that the Council needed to proceed with a bill draft specifically reapportioning the existing districts.

Sen. Thomas said that his motion was to change the draft from four districts to two districts being an east and a west district. There are two issues here: updating for population and whether the appointing authorities are locked into one of the four areas. He said that he did not believe that the issues were that complex and suggested that if the title of the bill were broad enough, it could be amended during the session. The motion passed 9 to 3 with Rep. Mood, Rep. Noennig, and Sen. Doherty voting no. Sen. Thomas said that he would carry the bill.

### **LEGISLATIVE FINANCE COMMITTEE (LFC) PROPOSED LEGISLATION ON REQUESTING ATTORNEY GENERAL'S OPINIONS**

Ms. Menzies reported that in December 2001, the LFC requested a bill to allow the LFC, Legislative Council, Legislative Audit Committee, and EQC to request legal opinions from the Attorney General. The intent of the bill draft was to give the four statutory committees clear authority to request opinions regarding issues with Executive Branch agencies' application of laws. In October 2002, the LFC voted to approve introduction of the bill pending support from the other committees. The LFC has requested feedback from the Legislative Council.

Sen. Cole said that he had discussed this issue with the EQC and found it had merit. Sen. Cole moved that the Legislative Council support the LFC legislation.

Rep. Newman asked who can currently request an Attorney General's opinion. Mr. Petesch responded that agency heads, the Legislature, and either house may request an opinion. In practice, the Speaker and the President may request an opinion on behalf of his or her respective house. In response to further questioning, Mr. Petesch stated that it is a rare occurrence for the presiding officers to request opinions, which are considered controlling unless modified by judicial or legislative action. Under this proposal, the committee would vote as to whether an opinion would be requested; the committee would also shape the request for the opinion. Typically an opinion would be requested when there is a dispute between a legislative committee and an executive branch agency. An opinion would bind an executive branch agency during an interim until changes to the law could be made in the next session. An Attorney General's opinion is one method to resolve a dispute during the interim without litigation. Currently a legislative committee may request an Attorney General's opinion only through the Speaker or President.

Sen. Doherty amended the motion to require a two-thirds vote of the committee in order to request an opinion. Sen. Grimes said that the vote should be three-fourths or unanimous. Sen. Doherty revised his amendment to the motion to require a super majority vote from the committee to request an opinion.

Rep. McGee said that he disagrees with the motion. He stated that it is the Legislature's purview to write law and that the Legislature should not rely on the courts to perform this function. In addition, when the Legislature defers to a single entity, such as the Attorney General, the line between the Legislature and the Executive becomes blurred.

The motion passed 10 - 2 with Rep. McGee and Rep. Newman voting no. Sen. Thomas moved to reconsider the Council's action. The motion passed. Rep. McGee moved to table the Doherty motion. The motion to table passed 8 - 4 with Sen. Doherty, Sen. Christiaens, Rep. Golie, and Rep. Noennig voting no.

## **LEGISLATIVE COUNCIL PHOTO**

A photograph of the 2001-2002 Legislative Council was taken on the Capitol's grand staircase.

## **REPORT FROM MANAGEMENT ADVISORY SUBCOMMITTEE**

The meeting was closed to receive a report from the Management Advisory Subcommittee on the Executive Director's performance appraisal.

## **UPDATE ON TELEVISION MONTANA (TVMT)**

**Stephen Maly, Legislative Research Analyst, LSD** provided an update on TVMT. He noted that during each day of the 2003 session, two committee meetings will be covered simultaneously in the morning and in the afternoon in addition to the Senate and House floor sessions. These events will be broadcast within the Capitol and to Helena cable subscribers. In addition, a weekly legislative digest will be produced and broadcast over Montana PBS throughout the state. (EXHIBIT #5)

In reference to the weekly digest, Rep. McGee said that he was not in favor of legislative staff editing tapes and presenting sound bites to the public. Mr. Maly said that he was very sensitive to the issues raised by Rep. McGee. Rep. Noennig said that other states had raised similar concerns when their programs were launched; he said that the "plug can be pulled at any time" if the legislative digest is not working as intended. Rep. Mood asked Mr. Maly to let the Council know if he is lobbied by legislators to cover or not to cover certain hearings. Sen. Grimes said that he saw some benefit in getting the digest out to the public to let people see what a citizen legislature is all about.

## **JUDICIAL REDISTRICTING PROJECT**

Susan Fox provided an update on the judicial redistricting project, which was a continuation of a project of the Legislative Council that began in 1999. (EXHIBIT # 6) She said that since 1999, two district court judges have been added and the state has assumed district court costs. The District Court Council has not pursued any potential judicial redistricting but has chosen to study resource allocation. Ms. Fox noted that the Legislative Council has no specific directive and therefore may choose from numerous options including discontinuing its judicial redistricting study, continuing it for another interim, or assigning this topic to the Law and Justice Interim Committee.

Sen. Thomas asked if one option for the Council would be to endorse a judicial redistricting plan. Ms. Fox said yes. Sen. Thomas said that he has always believed that action should be taken because there is great inequity in case loads. Rep. Noennig said that this has been a frustrating issue and that there has been strong resistance from the judiciary; now funding reallocation has become the issue. Sen. Thomas suggested that the redistricting process could occur by introducing a bill this session and using the hearing process before the Judiciary Committees. Sen. Grimes said that this is a huge issue and questioned whether the Legislature would want to address it this session. He said that he would be willing to work on it during the interim.

Sen. Thomas moved that a bill be drafted to reapportion the judicial districts while maintaining the same number of judges. The motion passed unanimously. Sen. Thomas said that he would carry the bill.

## **SJR 22 JOINT SUBCOMMITTEE ON HEALTH CARE AND HEALTH INSURANCE RECOMMENDATION**

**Dave Bohyer, Director, Office of Research and Policy Analysis**, reported on a recommendation to the Legislative Council and several other committees from the SJR 22 Joint Subcommittee on Health Care and Health Insurance. (EXHIBIT #7) The Subcommittee recommended that the 58th Legislature strive to direct studies of health care issues to the Children, Families, and Health and Human Services (CFHHS) Interim Committee.

Sen. Christiaens agreed that health care issues need to be addressed in one place. Sen. Grimes said that he is somewhat worried that the CFHHS Interim Committee's plate is too full but agreed that the recommendation made sense.

## **FOLLOW UP FROM SEPTEMBER MEETING**

Ms. Menzies said that at the September meeting, members discussed the possibility of introducing legislation to change the definition of "proceedings of the legislature" to eliminate the need to provide daily journals. Staff has determined that no change is needed at this time. The Senate and House journals will still be printed, and customers will have the option to purchase them. Next session the Council may want to look into cleaning up the statues in this area.

**Karen Berger, Financial Services Manager, LSD** provided an update on legislator per diem payments. She reported that legislators will be given the option to have their per diem paid along with payroll, which will allow for direct deposit.

## **STAFF UPDATES**

Lois Menzies provided updates on the following topics:

- ! Video recording of selected standing committee meetings. At the September meeting, the Council asked staff to explore the possibility of video recording meetings in selected Senate and House committee rooms rather than using an audio recorder in one room and a video recorder in another. Staff has concluded that video recording is a better technology to use. Therefore, meetings will be recorded on a digital video tape, and a video CD will be produced for the Montana Historical Society.
- ! Legislative intern program. Despite the fact that several actions were taken to attempt to generate more interest in the legislative intern program, only one student applied to serve as a legislative intern during the 2003 session. Rep. Gillan agreed to assist staff in finding a legislator to serve as the intern's sponsor.
- ! America's Legislators Back to School Week. This was the first year that the Montana Legislature has participated in this program sponsored by the National Conference of

State Legislatures. To date, 12 legislators have participated by visiting 22 schools and meeting with approximately 750 students. Ms. Menzies said that she attended the MEA-MFT conference in Missoula in October and provided a workshop and staffed an informational booth to spread the word about the program.

- ! Law School for Legislators and New Legislator Orientation. The programs for these two sessions were distributed. (EXHIBIT #8) The law school is the afternoon of November 20; the orientation is November 21 and 22.

#### **FAREWELL TO DEPARTING COUNCIL MEMBERS AND ADJOURNMENT**

A farewell to departing Council members followed. Senators Christiaens, Cole, and Doherty were thanked for their good service to the Council and the Montana Legislature.

The meeting adjourned at 5:30 p.m.